



THE WAQF, ITS BASIC OPERATIONAL STRUCTURE AND DEVELOPMENT

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Income Redistribution and Waqfs

- In Islam, accumulation of wealth and its redistribution are inseparable.
- Once wealth is accumulated
- Muslims are ordained to redistribute this wealth voluntarily.



Voluntarism

- Income redistribution by resorting to taxation is not the preferred method.
- Voluntary donations and waqf establishment were definitely preferred.
- Waqfs, in time, became very popular.



Indeed, Islamic economic history indicates that

waqf, not *zekat*,

was the most important institution for redistribution of wealth.³



We have substantial historical evidence for this.

For instance, during the 18th century, total revenue of waqfs in the Ottoman Empire equalled one-third to half of the total state revenues.

³Marshall G. S. Hodgson, *The Venture of Islam*, (Chicago: University of Chicago Press, 1974), vol. II: 124. Bahaddin Yediyıldız, *xııı Yüzyılda Türkiye’de Vakıf Müessesesi* (Ankara: TTK, 2003).



Charitable or philanthropic foundations are known in the Islamic world as waqf or *habs*.

For westerners, the traditional waqf can also be described as a non-profit trust.

Origins



Although some pre-Islamic civilizations were aware of waqf like structures, the origins of Islamic waqfs as we know them today are traced back to a statement by Prophet Muhammad (pbuh) known as *Thawab ba'd al Wafah* (reward after death):

“Abu Hurairah reported Allah’s messenger as saying: When a person dies, all his/her acts come to an end, but three: recurring (ongoing) charity, or knowledge from which people benefit, or a pious offspring, who prays for him/her.”⁵

⁵Imam Muslim, *Sahih Muslim; Al-Kutub al-Sittah wa Shuruhu* (Istanbul: Çağrı, 1992): bab 3, hadith 14.



Thus, a Muslim can continue earning *sawab* even after death.

Waqf is the best instrument for this, because it can combine all these three acts.

Indeed, a waqf established as a *kulliyah*,
a complete system,
can combine all these three acts.



A mosque stands at the center of a *waqf -kulliyah* and whenever the faithful pray in it, the founder of the *waqf* is considered to have provided ongoing charity.

A *waqf-kulliyah* can also provide free food for the poor, another very clear on-going charity.

In the school/university of the *waqf*, knowledge is produced and disseminated.



Finally, the management of the waqf can be granted to the pious offspring, who, would pray for the soul of the founder.

By the way,

The root of the Arabic word “Kulliyah”, kll, was borrowed by the English language in the form of “cll” and led to the English word: “college”.



The basic structure of a waqf is
as follows:
a privately owned property,
(or in some countries public funds)
is endowed for a charitable purpose
and the revenue, which this property generates, is
allocated for this purpose in perpetuity.

Management

- Ottoman waqfs were either managed directly by their founders,
- Or, by the trustees appointed by the founders.
- During the 18th century, 67 percent of them were managed by trustees appointed by the founders.
- The rest were appointed by courts, when the appointed trustees had expired.
- This contrasts with Malaysia, where the sole trustee of all waqfs is the SIRCI in every state.



Waqfs, so structured, stand out as one of the great achievements of Islamic civilization. All over the vast Islamic world, from the Atlantic to the Pacific, magnificent works of architecture as well as services vitally important to the society such as education, health and many others have been organized, financed and maintained for centuries through this system.



Historians have established that the Islamic waqf law was borrowed by Europeans, particularly the English, during the crusades, when they had “visited” the Middle East and become acquainted with the Islamic culture.



An excellent example is the
Merton College of Oxford University established in 1264.
It is generally accepted that
Merton College represents a threshold
in the evolution of European universities.



The Merton foundation became a respected model in England and was imitated by the foundation of Peterhouse, Cambridge University. Prof. Gaudiosi has argued that the endowment deed of Merton College was in such conformity with the Islamic waqf law that it would have been approved in the Islamic world by any learned judge.⁶

⁶Monica Gaudiosi, "The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College", *University of Pennsylvania Law Review*, vol. 136, no. 4, 1988: 1231-1261.



In the USA also,

The top universities are either originally structured as waqfs (trusts)

Or, they all have their own university endowments.

Harvard, Yale, Penn, Princeton etc,...



According to the Hanafite law,
when a privately owned property is
endowed and is made the *corpus* of a waqf,
it becomes Allah's property.



Consequently, many waqfs with sound and sufficient endowments have survived for considerably longer than half a millennium and some even for more than a millennium.⁷

⁷Daniel Crecelius, "Introduction", *Journal of the Economic and Social History of the Orient*, vol. 38, 1995, no. 3.

Inspections

- It is difficult to reach a conclusion regarding the role of inspections on this longevity.
- During the 18th century 64 percent of waqfs were regularly inspected by local courts.
- But some founders (36 percent) preferred to have their waqfs inspected by persons, *nazirs*, appointed by themselves.
- 32 percent of *nazirs* were paid by the waqfs they controlled, while 67 percent worked voluntarily.
- If a court wanted to inspect a *nazir* controlled waqf, it had to obtain permission from its *nazir*.



Notwithstanding their longevity,
the history of waqfs is a turbulent one.

For centuries, the fate of this institution was
closely linked to the fates of the states
under which they functioned.

Failing states and desperate revenue seeking rulers had
always a lust for the rich, waqf-controlled assets.



This provocation could have been curbed somewhat had waqfs paid taxes to the state.

But there were no uniform rules on this, while the Central Asian waqfs paid taxes to the state depending upon their fiscal status before their establishment, neither the Malikite waqfs of Muslim Spain nor the Hanafite Ottoman cash waqfs of Bursa paid any taxes.



Consequently,
throughout Islamic history waqf-state relations
have remained difficult.
While, on the one hand,
the Sultans established some of the greatest waqfs,
on the other,
the state often violated the
property rights of the waqfs,
particularly if they were not legally sound.



Nowhere in this long history, however, did the waqfs experience the universal and deliberate destruction that was inflicted upon them during the nineteenth and twentieth centuries, a fact which pinpoints to western imperialism or westernisation as the culprit.

Usurpation of waqf properties started under western pressure and continued, even after Islamic countries gained independence, under the indigenous modernists.

- Consequently, in most of the Islamic world, waqfs are in a dilapidated state.
- A new law to reform the waqfs is needed.
- Such a draft law has been prepared for Malaysia by INCEIF.
- Another draft law for the bulk of the Islamic world has been prepared by IDB/IRTI/Kuwait Public Foundation.



CATEGORIES OF WAQFS

There are several categorizations of waqfs.

If the revenue generated is spent entirely on charity/philanthropy,

such a waqf would be known as waqf *khayri*.



If the revenue is spent for the family members of the founder,
this would be waqf *ahli* or *khas*.

Islamic law permits family waqfs.



The exact nature of the *corpus* leads to still another categorization: the real estate or cash waqfs (*awqaf al-nuqud*). In the 20th century, Cash waqfs have evolved into the waqfs of stocks. These are waqfs established with the stocks of incorporated joint-stock companies.

REAL ESTATE WAQFS



Traditional real estate waqfs functioned in a simple manner.

They were either endowed in urban areas, where their endowment (corpus) would be in the form of residential buildings, shops, bath-houses or other rent yielding urban property, or in rural areas in which case their *corpus* would be in the form of cultivable land.



In rural areas,
the waqf land would be managed through share-
cropping, *muzara'a*,
with a certain share of the produce going to the land
owning waqf
and the rest to the cultivators.

Islamic Share cropping

- *Muzara'a* is the application of the classical *mudaraba* in agriculture.
- In Malaysia, Palm oil plantations endowed as waqf land, can be cultivated this way.
- Waqf provides the land and the produce can be shared between the waqf and the cultivator according to mutual agreement.
- This is also known as share cropping.

Development of Waqf Lands

- Hukr constitutes another method to develop waqf properties.
- This is basically leasing a waqf owned land on long term basis
- The developer rents the waqf's land
- The rent is determined by *ujr misl*, i.e. the level of rent paid for similar properties in the vicinity.
- Providing the developer does not fail to pay this rent, the building that he erects is considered his property

Double Ownership

- In Hukr there is double ownership,
- While the *raqaba (dominium eminens)* of the land belongs to the waqf,
- the usufruct belongs to the developer
- The developer obtains this right to use the property he builds on waqf land, in return for the rent he pays.
- The building is his for as long as he pays the rent
- The developer could even bequeath his usufruct to his heirs, providing they continue to pay the rent

- *Hukr* is a long term lease act (*ijarah tavilah*).
- It originated with the Hanbelite school and became accepted by all schools. Hanefite law normally limits leasing land to 3 years. But *Hukr* constitutes exception.
- The Lebanese law of real estate calls *Hukr*, *Mukataa*, and defines it as a form of rent, which gives the tenant the right to build anything on the land of the waqf.

- Some scholars have argued that in history, *hukr* or *muqataa* was only resorted when
- the waqf property on the land was destroyed and the waqf did not have the means to repair it
- Or *istibdal* was also not possible
- Under these conditions, the permission to resort to *Hukr* or *muqata'a* had to be obtained either from a court or the ruler.

Waqf and Urbanization

- But *muqata'a waqf* was also used for urbanization.
- When a city was conquered, army commanders quickly took over urban property with potential for development.
- They then transformed it into waqf and then using *muqata'a waqf* system allowed immigrants to build upon it.

Increasing the rent

- Since *Hukr* or *muqata'a* is long term rent, ability of the waqf to increase the rent was very important
- The first condition was that the rent paid by the developer cannot be less than the prevailing rents for similar properties
- Courts did not take into consideration any increase in the value of land caused by the building erected by the developer.
- They did, however, consider any increase in value caused by the overall development of the district

Advantage/disadvantages of the *Waqf Muqata'a*

- Advantages:
- *Waqf Muqata'a* enabled a waqf to rescue its asset (land) that had become useless.
- When tenants built upon it, the waqf gained new and valuable assets.
- When the tenant's descendants expired, assets reverted back to the waqf.

Advantage/disadvantages of the *Waqf Muqata'a*

- Disadvantages:
- Such long term leases diluted the property right of the waqf
- If the lease contract did not clearly state the condition of '*ujr misl*', rent quickly became insignificant.
- If the prevailing currency was devalued, rent lost its value even more.



Frequent fires or devastating earth quakes constituted a serious danger for urban real estate waqfs. When that happened, and the corpus of the waqf was destroyed, the waqf simply failed to function. The solution found was the *ijaratayn*, or double rent.

IJARATAYN

- Ijaratayn (double rent) is defined by the current waqf law of Turkey as follows:
- Waqf assets leased without a fixed terminal date on the condition that a lump-sum payment (rent) nearly equal to the value of the asset is made upfront, plus, the payment of annual rent.

Marsad

- If a waqf lost its income and its buildings were in need of repairs, the trustee could borrow money
- In this case, the waqf, not the trustee, would be considered the debtor (This proves that waqf had judicial personality – an issue rejected by some orientalist authors)

- With the money obtained, the waqf buildings are repaired and are then rented to the lender.
- The rent is regularly deducted from the debt of the waqf.
- In our times, this is known as *musharaka mutanakisa*
- The problem with either *marsad* or MM, is that if rent is not sufficiently high, and the term is long, new repairs may be needed and the waqf may fail to recover its property.

Irsad Waqfs

- Classical Islamic law demands that a property to be endowed as a waqf must be privately owned.
- But, in time, lands belonging to the state were also endowed. This happened when the rulers allocated state lands to certain persons, who then donated these as waqf. Direct allocations by the rulers were also common. These were made in the form of waqf to ensure perpetuity.
- Two conditions were relevant: The permission by the ruler and that the *raqaba* remains with the state while the usufruct belongs to the waqf in perpetuity.

Reflection of the classical upon the modern

- The classical methods just mentioned led to the emergence of the contemporary forms.
- The current law of waqfs in Turkey permits leasing waqf assets for restoration and repairs.
- Tenants are to pay a certain annual rent and are to keep the asset in their possession for a certain time. Details are decided in public auctions.
- The tenant chosen then returns the asset to the waqf at the end of the period in question.
- Maximum period allowed is 49 years and is granted in return for restoring the asset.

BOT and Unit-Sharing

- Two other popular forms are used by land owners in Turkey, which may be relevant for the Malaysian waqfs: BOT and unit-sharing.
- The former, “build-operate-transfer” is well-known and needs no further explanation.

Unit-sharing

- Unit-sharing involves land owner and the developer agreeing to share the total number of units that the developer promises to build.
- Usually, depending on the location of the land, a ratio of 50/50 or 40/60 is used.
- But whatever the ratio chosen, this is a risky process in view of the possibility that the developer may fail to complete the building.

CONCLUSION



- Islamic law is very flexible and provides many feasible alternatives to develop waqf owned assets.
- Moreover, these alternatives are not just in theory.
- Islamic economic history informs us that they were successfully used in the past.
- This is confirmed by the survival of many waqf assets over the centuries in excellent condition in some countries of the Islamic world.

THANK YOU
FOR YOUR
ATTENTION!

Contribution of Waqfs to Economy

- In order to fully understand the harm inflicted by the modernist policies directed against waqfs, the contribution of the waqf system to the economy must be well understood.



The waqf system has provided throughout history a myriad of essential services such as health, education, municipal services, etc., to Islamic societies – to Muslims as well as non-Muslims.

The system therefore contributes significantly towards that ultimate goal of so many modern economists: with the waqfs providing bulk of the financial needs of the service sector, there would be a substantial reduction in government expenditure.



The reduction in government expenditure, on the other hand, would lead to a smaller budget deficit, which in turn, would lower the need for government borrowing.



This is precisely what Angela Merkel is trying to do in Europe nowadays. She is forcing all member states to reduce government borrowing by not allowing the ECB to buy government bonds. In fact, she is simply telling them not to borrow!

Waqf enters into the picture precisely here: It reduces a government's need to borrow.

Hence its modernity and relevance today is truly astounding !



A reduction in government borrowing would curb the “crowding-out effect” and lead to a reduction in the rate of interest, consequently checking a basic impediment to private investment and growth.



Obviously, reducing the rate of interest, preferably to zero, would also be the ultimate goal of an Islamic government. To the extent that the waqf system contributes to the reduction/elimination of interest, it becomes an important tool for Islamic macro-economics.

The waqf could fulfil these functions by voluntary donations made by the well to do. Thus, privately accumulated capital is voluntarily endowed to finance all sorts of social services to the society.



At this point another extremely important function of the waqf becomes apparent: not only does it help reduce government expenditure and consequently, the rate of the prevailing interest and pave the way for growth, it also achieves another modern economic goal; a better distribution of income in the economy. Moreover, this improvement in the distribution of income would be achieved essentially through voluntary donations and the need for taxation is reduced.



Thus, the relatively low tax burden of an Islamic economy must be considered within a broader picture that comprises the waqf system.

Indeed, tax burden in an Islamic economy can be low because bulk of the essential services should be provided by the waqfs.

Tax revenues are earmarked primarily for defense.



This is not just theory. Ottoman budget studies have confirmed that indeed this was the case.

There are further implications:

lower taxes would have a positive impact on aggregate production while at the same time reducing costs.

Prices to the consumers would come down and pave the way for non-inflationary growth.



Thus most Islamic economists who argue for increasing taxation despite the Qur'anic injunctions, have got it wrong !
Instead of trying to impose taxes that are not in the Qur'an, they should reform the waqf system.
Because a well-functioning waqf system would allow the economy to function with minimum tax burden.
Ottoman evidence channelling all tax revenues for defence and financing all essential services through waqfs confirms that this is possible.



One of the most important of these services is education.

Education serves both growth and equity.

And throughout history it was the waqf system, which provided education and health in Islamic countries.

These two are the most important components of human capital.

And human capital is the secret of the successes of Japan, Taiwan and S.Korea, all countries without natural resources.



There is no doubt that centralization and the damage inflicted upon the waqf system has been detrimental to the cause of these services in the Islamic world. It is clear that the state provided education and health services has not been a match for the waqf provided one.



At the very least,
the waqf system is needed to supplement
the state provided education and health sectors.
Presently, in the aftermath of the 1967 reforms,
There are 166 universities in Turkey.
Of these 62 are waqf universities.
In Istanbul,
There are 42 universities.
Of these, 33 are waqf universities.



And Turkey too, like Japan, S. Korea and Taiwan, is a country without any natural resources. Yet, it has been achieving high rates of sustained growth.

Much of this is thanks to its relatively healthy and well educated work force.

This is, to a large extent, an outcome of its reformed and dynamic waqf system.



The positive impact of the waqfs on employment should also be remembered.

Partly as a consequence,

Western countries have now reversed their traditional hostilities to trusts/foundations.

The French government, which was the most anti-waqf government throughout history, now subsidizes 60 % of the expenditures of French foundations.



The result, all over the west, was a significant increase in employment.

The non-profit sector accounted for an average of 13 percent of the net jobs added between 1980-1990 in France, Germany and the United States.

In the U.S., the non-profit sector accounts for 6.9 percent of total employment.

Clearly, in addition to all the advantages mentioned above, the revival of the system would contribute to the problem of employment in the Islamic world as well.



Waqfs may also play a significant role in the democratisation of Islamic countries. This is because, waqfs constituted for centuries civil society institutions, *par excellence*, for the Islamic world. Indeed, established with private capital, which they often pooled, they were decentralized, autonomous



decision making units involved in local problems. It is quite possible that the incapacitating policies imposed on the waqf system for the last 200 years, have also deprived the Islamic world from its most potent democratic force.

Thus, lack of democracy is not, as some believe, an outcome of Islam as a religion, but a consequence of the last two centuries of institutional and economic history.

THANK YOU !